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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JOSH BUTTERFLY,)	CV 05-53-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
BILL SLAUGHTER, et al.,)	
)	
Defendants.)	
_____)	

United States Magistrate Judge Keith Strong entered his Findings and Recommendation on this matter on May 8, 2007. Plaintiff Butterfly filed objections and is therefore entitled to de novo review of the record. 28 U.S.C. § 636(b)(1). The parties are familiar with the factual and procedural history so they will be recited only as necessary.

Judge Strong concluded that Butterfly's amended complaint be dismissed with prejudice and I agree. It is dismissed because in accordance with the requisite preliminary screening, Butterfly's claims fail to meet the threshold set forth in the federal statutes that govern prisoner and in forma pauperis proceedings. 28 U.S.C. §§ 1915(e)(2), 1915A(a); 42 U.S.C. § 1997e(c)(1); *Lopez*

v. *Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc). The Court previously allowed Butterfly to amend his complaint in accordance with *Lopez*, but that has not cured the deficiencies.

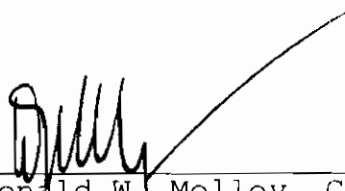
Butterfly's allegations fail because they do not state claims for which relief may be granted. As Judge Strong observed, Butterfly's claims of retaliation and discrimination are insufficient to trigger constitutional protection. The Court notes Butterfly's objections but does not find his reasoning persuasive.

Accordingly, based upon the foregoing I adopt Judge Strong's Findings and Recommendation (dkt #12) in full: Plaintiff's amended complaint (dkt #9) is DISMISSED WITH PREJUDICE; and

IT IS CERTIFIED that pursuant to Fed. R. App. P. 24(a)(4)(B), any appeal from this order will not be taken in good faith.

Plaintiff is advised that this action counts as one strike against him for failure to state a claim on which relief may be granted pursuant to 28 U.S.C. § 1915(g).

DATED this 31st day of May, 2007.


Donald W. Molloy, Chief Judge
United States District Court